

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, July 13, 2011, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

BOARD MEMBERS PRESENT: Robert Bartholomew
Tom Day
Walter Schmidt
Nancy Bonniwell
Richard Bayer

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Nancy M. Bonniwell

OTHERS PRESENT: Town of Merton Board of Adjustment
Peggy S. Tilley, Senior Land Use Specialist
Arleen Lynch, BA11:027, owner
Douglas H. Johnson, BA11:028, agent
Tom Casey, BA11:024, owner
Martin Komondoros, BA11:027
Daniel Necci, BA11:027, attorney for neighbor
Troy A. Duke, BA11:026, agent
Lloyd Crom, BA11:027, neighbor
Ralph Mickler, BA11:028, neighbor
Teri Backlund, BA11:024
Doug Huskey, BA11:016
Steve Schuyler, BA11:024, contractor
Susan Bennett, BA11:028, owner
Jane Briner, BA11:028
Rick Kloth, BA11:027, neighbor
Debb & Jeff Jaech

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

CLOSED SESSION:

Ms. Bonniwell

I make a motion to convene in closed session pursuant to Section 19.85(1)(g), Wisconsin Statutes, to confer with legal counsel from the Waukesha County Corporation Counsel's Office who is rendering oral or written legal advice concerning strategy to be adopted by the Waukesha County Board of Adjustment with respect to litigation in which it is involved, specifically concerning the following case:

Steve Hegwood vs. Waukesha County Board of Adjustment,
Waukesha County Circuit Court Case No. 11-CV-1398.

The motion was seconded by Mr. Schmidt and carried with a roll call vote as follows:

Richard Bayer: *Aye*
Nancy Bonniwell: *Aye*
Tom Day: *Mr. Day recused himself.*
Walter Schmidt: *Aye*
Bob Bartholomew: *Aye*

NEW BUSINESS:

Ms. Bonniwell *I make a motion to reconvene in open session.*

The motion was seconded by Mr. Bayer and carried with a roll call vote as follows:

Richard Bayer: *Aye*
Nancy Bonniwell: *Aye*
Tom Day: *Aye*
Walter Schmidt: *Aye*
Bob Bartholomew: *Aye*

BA11:029 JOHN AND VICTORIA PAKALSKI (OWNERS) PAUL AGENT (AGENT):

Mr. Day *I make a motion to **adjourn** the public hearing until the August 10, 2011, Board of Adjustment Meeting per the petitioner's request.*

The motion was seconded by Ms. Bonniwell and carried unanimously.

BA11:016 DOUG HUSKEY:

Mr. Schmidt *I make a motion to **deny** the request for after-the-fact variances from the floor area ratio and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance and **deny** the request for a special exception from the offset requirements of the Ordinance, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Ms. Bonniwell.

During discussion, the Board included the following in their reasons: *The new construction on the third floor is almost like a new room and goes beyond what is necessary in order to have reasonable use of the property. There is no hardship for an overhang on the deck that is more than 2 ft. A 2 ft. overhang would only require a Permit. The petitioner's desire for shade is not a need and the correcting of the leak with a roof overhang is not a hardship. Many properties have flat roof balconies that can be fixed otherwise.*

The motion carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for after-the-fact variances from the floor area ratio and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance as well as **denial** of the request for a special exception from the offset requirements of the Ordinance for the construction of a 16 ft. by 4 ft. (64 sq. ft.) overhang over the first floor deck and a 10 ft. by 16 ft. (160 sq. ft.) covered porch addition over the second floor balcony for the following reasons:

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The petitioner has failed to demonstrate that the request for variances from the floor area ratio and open space requirements meets the three required tests for the granting of a variance. The first test is whether compliance with the ordinance would cause the owner to experience an unnecessary hardship and whether compliance with the Ordinance requirements would unreasonably prevent the owner from using the property for a permitted purpose. This test further indicates that variances are intended to provide only the minimum amount of relief necessary to allow a reasonable use of the property. In 1991, the Board of Adjustment granted variances for the construction of the residence with attached garage. In 1997, the Board of Adjustment granted variances for the construction of a detached garage. In 1991, the Board determined that the granting of the variances would allow the petitioner to enjoy a reasonable use of the property in the form of a modest sized home and attached garage. In 1997, the Board determined that the detached garage would only slightly increase the floor area ratio and would be consistent with other development in the surrounding area. The petitioner is now asking to further increase the floor area ratio and decrease the open space on the property to allow a 64 sq. ft. overhang over the first floor deck and a 160 sq. ft. covered porch addition over the second floor balcony. The Board has previously established that the floor area ratio that currently exists on site allows the petitioner a reasonable use of the property. The property currently contains a two-story residence with an attached garage and a detached garage. It has not been demonstrated that compliance with the Ordinance would prevent the owner from using the property for a permitted purpose or would be unreasonably burdensome on him. The fact that the construction has commenced without the necessary permits is a self-created hardship and should not be a factor considered herein.

The second test requires the petitioner to demonstrate that there are unique physical conditions existing on the property, which are not self-created, and which prevent compliance with the Ordinance thereby causing a hardship and/or no reasonable use. The physical limitations of the property and not the personal circumstances or desires of the property owner are the basis for this test. Again, the Board has previously established that the variances granted for the new home and detached garage construction provided a reasonable use of the property. The property is similar in size and shape to the other properties in the area and there are no unique physical conditions of the property that justify the granting of the variances relative to the proposed overhang and covered porch addition.

The third test requires the petitioner to demonstrate that the granting of the variance will not adversely affect the general public interest/welfare or be detrimental to nearby properties or the natural resources in the area. Because the proposed improvements are constructed over an existing balcony and an existing deck and are relatively small in nature, the proposed improvements may not have an adverse affect on the general public interest/welfare. However, the second floor covered porch addition creates a noticeable increase in the bulk of the structure as viewed from the lakeside.

In addition to the variances from floor area ratio and open space requirements, the covered porch addition also requires a special exception from the offset requirements of the Ordinance. A special exception is a minor adjustment to the requirements of the Ordinance, owing to special conditions of the property. A special exception differs from a variance in that a special exception does not necessarily require the demonstration of an unnecessary hardship. However, the special exception must be necessary and desirable and must not adversely affect adjacent property owners. As noted above, the addition is not necessary and there are no special conditions of the property that justify the granting of a special exception from the offset requirements for the covered porch addition.

Although the proposed improvements may not necessarily have an adverse impact on the general public interest, the petitioner has not met two of the three required tests for the granting of variances nor has meet the requirements for the granting of a special exception. The property owner's desire for additional shade is a personal preference and not justification for the granting of variances. Correcting a leak is not justification for the granting of variances to allow additional floor area and bulk to the structure. Other options to correct a leak could be pursued that would not require variances. Therefore, the approval of this request would not be within the purpose and intent of the Ordinance.

BA11:027 ARLEEN LYNCH:

Mr. Day

I make a motion to approve the request for a variances from the offset, road setback, floor area ratio, and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance and approve a special exception from the accessory building floor area ratio

requirements of the Ordinance, in accordance with the Staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.

The motion was seconded by Mr. Schmidt. Discussion ensued.

Ms. Bonniwell

I make a motion to amend the original motion to include the following change: Condition No. 4 of the Staff Recommendation shall read as follows, "The proposed garage must be located at least 5 ft. from the side lot lines and 1 ft. from the established road right-of-way, as measured to the outer edges of the walls, provided the overhangs do not exceed 1 ft. in width. If the overhangs exceed 1 ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset and setback requirements."

The motion to amend was seconded by Mr. Schmidt and carried unanimously.

During discussion, the Board included the following in their reasons: *The hardship is that this is a non-conforming lot relative to lot size and therefore, the Board must assess the reasonableness of the request. In this case, a 20 ft. by 20 ft. detached garage is reasonable. The water issues would be addressed with Condition No. 10 and the other conditions should take care of the neighbors concerns. In this climate, a garage is necessary and it is a hardship not to have a garage.*

The Board then voted on the original motion as amended. The motion carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a variances from the offset, road setback, floor area ratio, and open space requirements of the Ordinance as well as **approval** of a special exception from the accessory building floor area ratio requirements of the Ordinance to allow the construction of a new detached garage on the property subject to the following conditions:

1. The proposed detached garage shall not exceed 20 ft. by 20 ft. (400 sq. ft.) in size.
2. The existing shed and garbage can enclosure structure must be removed from the property.
3. A "preliminary site evaluation" of the proposed garage and the septic system must be conducted by the Environmental Health Division. Prior to the issuance of a Zoning Permit, evidence must be submitted to the Planning and Zoning Division staff that the Environmental Health Division has no objection to the proposed garage and that it meets all required minimum separation distances and would not have an adverse effect on the operation of the private waste disposal system. If that cannot be done, a sanitary permit for a new waste disposal system must be issued, and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.

4. The proposed garage must be located at least 5 ft. from the side lot lines and outside of the established road right-of-way, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset and setback requirements.
5. The detached garage shall be located 40” from the existing oak tree as proposed.
6. The garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured from the lowest exposed point to the peak of the roof, must not exceed 18 ft.
7. The proposed garage may contain an upper-level storage area only if the garage conforms with the height requirement noted above and only if that upper level is not accessible via a permanent staircase. The upper level of the garage may be accessed via pull-down stairs.
8. Prior to the issuance of a Zoning Permit, a revised set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval. The plans shall be modified to make the garage more aesthetically pleasing from the road given its close proximity to the road. Specifically, window inserts should be added to the top of the garage door or similar mitigating measures shall be incorporated to be reviewed and approved by the Planning and Zoning Division Staff.
9. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed detached garage, in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
10. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed detached garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. The grading plan may be combined with the Plat of Survey required in Condition No. 9.
11. Any proposed or replacement retaining walls shall comply with all applicable Ordinance requirements.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, as conditioned, will allow the construction of a detached garage that will provide additional storage space and will be appropriately sized for the lot. The property does not currently contain a garage and the existing 190 sq. ft. shed will be removed from the property. Based on the size of the lot, no accessory structure could be constructed without the need for open space and floor area ratio variances. To require compliance with the Ordinance requirements relative to open space and floor area ratio would be unnecessarily burdensome on the property owner in that no garage could be constructed on the site.

The garage construction also requires a special exception from the accessory building floor area ratio requirements of the Ordinance. A special exception is a minor adjustment to the requirements of the Ordinance, owing to special conditions of the property. A special exception differs from a variance in that a special exception does not necessarily require the demonstration of an unnecessary hardship. However, the special exception must be necessary and desirable and must not adversely affect adjacent property owners. When granting special exceptions, the Board must still consider whether the requested special exception would be hazardous, harmful, noxious, offensive, or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects, and the Board may impose such restrictions or conditions they deem necessary for the protection of adjacent properties and the public interest and welfare. The construction of a 400 sq. ft. detached garage near the road and in a similar location as the existing shed, will not have an adverse impact on the surrounding neighborhood while providing necessary storage space for the property. It is appropriate to allow some relief from the accessory building floor area ratio to allow a modestly sized two-car garage.

As conditioned, the garage will be located a minimum of 5 ft. from the side lot line. This will allow for the necessary room for maintenance of the proposed garage, while allowing the owner to maintain the existing driveway on the site for parking space. The garage will be located outside of the road right-of-way of the road. The road is a minimally traveled dead-end road and to require that the garage be constructed further back from the road would result in the removal of a large tree as well as additional disturbance on the slope.

Therefore, the construction of the garage, as conditioned, will not have an adverse affect on the public interest and welfare and would be within the purpose and intent of the Ordinance.

BA11:024 TOM CASEY (OWNER) J.D. GRIFFITHS CO. (AGENT):

Note: Mr. Day recused himself from this hearing.

Mr. Schmidt

I make a motion to approve the request for a variance from the open space requirements and approve the request for a special exception from the accessory building floor area ratio requirements, in accordance with the Staff's recommendation, with the conditions stated in the Staff Report and for the

reasons stated in the Staff Report with the removal of Condition No. 2 and for the following additional reasons: Given the uniqueness of the property and the topography of the land, it would be a hardship to have no storage near the lake.

The motion was seconded by Mr. Bayer.

The motion passed with three yes votes from Mr. Bartholomew, Mr. Schmidt, and Mr. Bayer. Ms. Bonniwell voted no. Mr. Day had recused himself from this hearing and therefore did not vote.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a variance from the open space requirements as well as **approval** of the request for a special exception from the accessory building floor area ratio requirements of the Waukesha County Floodland and Shoreland Protection Ordinance, subject to the following conditions:

1. The detached garage shall not exceed 624 sq. ft. in size. An additional 24 sq. ft. may be allowed in an overhang the service door.
2. The existing 49 sq. ft. shed located on the lakeside of the residence shall be removed from the property within 6 months of the issuance of a Zoning Permit for the proposed garage construction.
3. A "preliminary site evaluation" of the proposed garage and the septic system must be conducted by the Environmental Health Division. Prior to the issuance of a Zoning Permit, evidence must be submitted to the Planning and Zoning Division staff that the Environmental Health Division has no objection to the proposed garage, and that it meets all required minimum separation distances and would not have an adverse effect on the operation of the private waste disposal system. If that cannot be done, a sanitary permit for a new waste disposal system must be issued, and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
4. The proposed detached garage must comply with the offset and road setback requirements of the Ordinance, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the garage must be located so that the outer edges of the overhangs conform with the offset and setback requirements.
5. The garage must contain only one story and it must conform with the height requirements of the Ordinance, i.e. the height of the garage, as measured from the lowest exposed point to the peak of the roof, must not exceed 18 ft.
6. The proposed garage may contain an upper-level storage area only if the garage conforms with the height requirement noted above and only if that upper level is not accessible via a permanent staircase. The upper level of the garage may be accessed via pull-down stairs.

7. Prior to the issuance of a Zoning Permit, a revised set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
8. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed detached garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
9. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed detached garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. The Grading Plan may be combined with the Plat of Survey required in Condition No. 8.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, as conditioned, will allow the construction of a detached garage that will provide additional storage space and will be sized appropriately for the lot. The property does not currently contain a garage. Based on the size of the lot, no structure could be constructed without the need for an open space variance. The buildable area on the site for a garage is limited by the proximity to the road and the steep topography leading to the lake. To require compliance with the Ordinance requirements relative to open space would be unnecessarily burdensome on the property owner in that no garage could be constructed on the site.

The garage construction also requires a special exception from the accessory building floor area ratio requirements of the Ordinance. A special exception is a minor adjustment to the requirements of the Ordinance, owing to special conditions of the property. A special exception differs from a variance in that a special exception does not necessarily require the demonstration of an unnecessary hardship. However, the special exception must be necessary and desirable and must not adversely affect adjacent property owners. When granting special exceptions, the Board must still consider whether the requested special exception would be hazardous, harmful, noxious, offensive, or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects, and the Board may impose such restrictions or conditions they deem necessary for the protection of adjacent properties and the public interest and welfare. The approval of a 624 sq. ft. garage with a 24 sq. ft. overhang over the

service door, although smaller than the proposed garage, will provide an adequate amount of storage space and will be appropriately sized for the lot. It is reasonable to grant some relief from the accessory building floor area ratio requirements since the property currently lacks adequate storage space and, as conditioned, the existing nonconforming shed near the lake will be removed. The construction of the garage, as conditioned, will not have an adverse affect on the public interest and welfare. Therefore, the approval of this request, as conditioned, would be within the purpose and intent of the Ordinance.

BA11:026 SCHUELER REVOCABLE LIVING TRUST (OWNER) TROY A. DUKE (AGENT):

Mr. Day

I make a motion to approve the request for variances from the in-law unit Conditional Use provisions of the Waukesha County Zoning Code, in accordance with the Staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.

The motion was seconded by Mr. Schmidt.

During discussion, the Board included the following in their reasons: *Due to the size of the home and the size of the lower level of the home, it would be difficult to segregate finished areas that are not to be considered part of the in-law unit.*

The motion carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the in-law unit conditional use provisions of the Waukesha County Zoning Code to allow the existing in-law unit to remain on the property, subject to the following conditions:

1. All Building Code compliance issues must be corrected to the satisfaction of the Town Building Inspector prior to the issuance of an Occupancy Permit for the in-law unit. It should be noted that this may result in the loss of bedrooms. No representation is made herein that more than two bedrooms are approved if not in compliance with the Building Code.
2. A Conditional Use Permit for the in-law unit must be obtained prior to the issuance of an after-the-fact Zoning Permit for the remodeling activities to the basement level of the residence.
3. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the in-law unit, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, as conditioned, will allow an in-law unit to exist that exceeds the maximum size allowed in the Code with more bedrooms than allowed in the Code. It should be noted that the property owner must still obtain a Conditional Use Permit for the use of the property including the in-law unit. As noted in the conditions above, the approval contained herein is subject to all building code compliance issues being resolved. This may result in the loss of bedrooms in the lower level. The property is 10 acres in size and the property owner also owns the adjacent 10 acre parcel to the north. The residence appears to be a single-family residence and the in-law unit has existed for several years without any complaints being received by the Planning and Zoning Division relative to its existence. It is not uncommon for horse farms to have secondary living quarters, and the proposed arrangement is appropriate given the context of the use. Due to the remote location of the lot and residence on the lot, the approval of the requested variances, as conditioned, would not be detrimental to the public interest and welfare and would be with the purpose and intent of the Code.

BA11:028 SUE BENNETT (OWNER) DOUG JOHNSON (AGENT):

Ms. Bonniwell

I make a motion to deny the request for a special exception from the accessory building floor area and approve the request for a variance from the offset requirements of the Waukesha County Shoreland and Floodland Protection Ordinance because it is a narrow lot and the reduced offset will allow sufficient room to access the garage, subject to the conditions stated in the Staff Recommendation with the removal of Condition No. 1.

There was no second and the motion failed.

Mr. Schmidt

I make a motion to approve the request for a variance from the offset requirements of the Waukesha County Shoreland and Floodland Protection Ordinance and approve the request for a special exception in accordance with the Staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report with the following modification:

Condition No. 1 shall be modified to read as follows: "The proposed detached garage shall not exceed 24 ft. by 30 ft. (720 sq. ft.) in size. An additional 20 sq. ft. may be allowed in an overhang or portico over the service door. If any other accessory building is removed from the property prior to the request for a Zoning Permit, the proposed detached garage

may be increased by the size of the accessory structure removed but the total accessory building floor area ratio on the property shall not exceed 3.26% (1,280 sq. ft.).”

The motion was seconded by Mr. Bayer.

During discussion, the Board included the following in their reasons: *Relief from the offset is needed due to the narrow lot and the approval of a special exception from the accessory building floor area ratio requirements allows the owner some flexibility to construct a detached garage and keep the summer kitchen structure or eliminate one of the other accessory buildings and build a larger detached garage.*

The motion carried unanimously.

The Planning and Zoning Division staff's recommendation was for recommends **approval** of the request for a variance from the offset requirements of the Waukesha County Shoreland and Floodland Protection Ordinance as well as **approval** of the request for a special exception from the accessory building floor area ratio requirements of the Ordinance to allow the construction of a new detached garage on the property, subject to the following conditions:

1. The proposed detached garage shall not exceed 24 ft. by 30 ft. (720 sq. ft.) in size. An additional 20 sq. ft. may be allowed in an overhang or portico over the service door.
2. The proposed detached garage must be located a minimum of 5 ft. from the north lot line, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset requirement.
3. The garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured from the lowest exposed point to the peak of the roof, must not exceed 18 ft.
4. The proposed garage may contain an upper-level storage area only if the garage conforms with the height requirement noted above and only if that upper level is not accessible via a permanent staircase. The upper level of the garage may be accessed via pull-down stairs.
5. Prior to the issuance of a Zoning Permit, a complete set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
6. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed detached garage, in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

7. If any changes to the existing grades are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. The grading plan may be combined with the Plat of Survey required in Condition No. 6.
8. Prior to the issuance of a Zoning Permit for the detached garage, documentation shall be submitted to the Planning and Zoning Division staff that the Town of Oconomowoc Plan Commission has approved the construction of a third accessory building on the property.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request with the recommended conditions will allow the construction of a reasonably sized approximately 3 car detached garage. It should be noted that if the petitioner would like to construct a larger detached garage, they could chose to remove either the nonconforming boathouse or the nonconforming summer kitchen structure to create more allowable accessory building floor area. With the new detached garage, the property will still comply with the overall floor area ratio and open space requirements of the Ordinance. The garage construction, as conditioned, requires a special exception from the accessory building floor area ratio requirements of the Ordinance. A special exception is a minor adjustment to the requirements of the Ordinance, owing to special conditions of the property. A special exception differs from a variance in that a special exception does not necessarily require the demonstration of an unnecessary hardship. However, the special exception must be necessary and desirable and must not adversely affect adjacent property owners. When granting special exceptions, the Board must still consider whether the requested special exception would be hazardous, harmful, noxious, offensive, or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects, and the Board may impose such restrictions or conditions they deem necessary for the protection of adjacent properties and the public interest and welfare. The 720 sq. ft. detached garage with 20 sq. ft. overhang or portico, as recommended, will fit with the characteristics of the lot and will not be detrimental to the surrounding neighborhood.

The detached garage will be constructed in approximately the same location as the existing garage with a side entry. In order to allow the side entry, a view of and access to the home, it is appropriate to grant some relief from the offset requirements on the narrow lot. However, as conditioned, the garage will be located 5 ft. from the property line, which will provide the

room necessary for maintenance of the structure. Therefore, the approval of this request, as conditioned, will be within the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION: None.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Day *I make a motion to approve the Summary of the Meeting of June 8, 2011.*

The motion was seconded by Mr. Schmidt and carried unanimously.

ADJOURNMENT:

Mr. Day *I make a motion to adjourn this meeting at 10:00 p.m.*

The motion was seconded by Ms. Bonniwell and carried unanimously.

Respectfully submitted,


Nancy M. Bonniwell
Secretary, Board of Adjustment